

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-08-90014

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BEFORE

Torruella, Boudin, and Howard, Circuit Judges  
McAuliffe and Woodcock, District Judges

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ORDER

ENTERED: FEBRUARY 24, 2009

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Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Lynch's order dismissing his complaint of judicial misconduct, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. The petitioner alleged that the judge engaged in misconduct while presiding over his civil proceeding.

The petitioner originally filed only the complaint form and copies of miscellaneous documentation. These included correspondence to the district court clerk, the chief district judge, and other public officials, correspondence from private parties to the petitioner, and several motions and a court order issued in the case. Based upon these materials, it appeared that the petitioner contended that the judge wrongfully denied the petitioner in forma pauperis (IFP) status and dismissed his lawsuit. The petitioner asserted that his disabilities entitled him to IFP status and that he had complied with the judge's request to type the civil complaint and submit supporting documentation. The petitioner stated that the judge "doesn't want to carry out the law

due his use of illicit drugs," and requested another judge hear his case.

Chief Judge Lynch dismissed the complaint. The Chief Judge first noted that the judicial misconduct statute does not authorize the removal of the presiding judge from a case. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rules 11, 19, and 20.

Based upon a review of the case docket, relevant pleadings and court orders, Chief Judge Lynch further observed that, in response to the petitioner's motion to proceed IFP, the judge promptly issued a memorandum and order describing the petitioner's history of frivolous litigation against the same defendant. The Chief Judge noted that, in this order, the judge explained that the petitioner was as an enjoined litigant who had been warned on multiple occasions not to instigate further proceedings against this defendant. The court found the petitioner's filings to be in clear violation of the orders issued in a previous case, denied the petitioner's IFP motion, and warned that further such filings would precipitate monetary sanctions and a contempt proceeding.

Chief Judge Lynch observed that, the following month, the petitioner filed a motion to institute a lawsuit, another IFP motion, and a letter to the chief district judge. In response, the subject judge issued a memorandum and order observing that these submissions appeared to assert undefined financial claims, as well as claims against the same defendant. The judge determined that the materials did "not present a basis upon which [the] Court could find any cognizable claims over which [it] has subject matter jurisdiction," and denied the petitioner's motions. The petitioner filed two further motions that the court also denied.

Chief Judge Lynch dismissed the complaint. The Chief Judge determined that there was

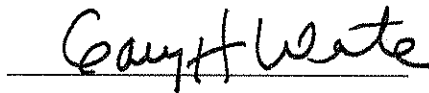
no information in the misconduct complaint, its attachments, or in the reviewed records from either of the two referenced cases suggesting that the judge harbored any improper motive, violated the law, or used illicit drugs. To the contrary, the judge sought to impose the "least punitive measure[s] necessary" to limit the petitioner's repetitive filings, and reviewed the petitioner's subsequent submissions in order to determine whether there were any reasonable grounds to allow the claims to proceed. Nor, the Chief Judge noted, did the court exercise its discretion to impose sanctions upon the petitioner. As the reviewed record was devoid of any facts in support of the allegations, the complaint was dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial Misconduct, Rule 11(c)(1)(C). As there was no evidence of bias or improper motive, insofar as the complaint was based upon the petitioner's disagreement with any of the court's rulings, it was also dismissed as not cognizable pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B).

In the petition for review, the petitioner states only that he "told the truth [and] got to the point of the aspect of the law." The petitioner submitted additional correspondence in which he asserts that the defendant in the case is a spy, and colluded with others to commit wire fraud and to force the petitioner to "have a social security representative payee when he doesn't need one." The petitioner asks that these identified individuals be prosecuted.

The petition for review is baseless. First, the judicial misconduct statute does not provide an avenue for addressing the petitioner's charges of wrongdoing against the defendant and others. See Rules of Judicial Misconduct, Rule 4. Moreover, the petition, like the original complaint, provides no information suggesting that the judge harbored bias against the petitioner or engaged in any wrongdoing in connection with the petitioner's cases. Accordingly, the misconduct

complaint was properly dismissed pursuant to pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-08-90014 is affirmed. See Rules of Judicial Misconduct, Rule 19(b)(1).

A handwritten signature in black ink, appearing to read "Gary H. Went", is written over a horizontal line.

Gary H. Went, Secretary